

APPENDIX

PART 2 OF 7

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

CASE NO. 3:04 CV-146-V-99-HTS

Sea Star Line, LLC
a limited liability company,

ORIGINAL

Plaintiff,

vs.

EMERALD EQUIPMENT LEASING,
INC., a corporation,

Defendant.

Deposition of **PHILIP BATES**, taken on behalf
of the Defendant, pursuant to Notice of Taking
Deposition in the above-entitled action, on Monday,
January, 10th, 2005, at 9:45 a.m., at the offices of
Powers Reporting, Inc., 220 East Forsyth Street,
Jacksonville, Florida, before Sherry Brazier, a Notary
Public in and for the State of Florida at Large.

1 A Correct.

2 Q And you had more than that at the time of
3 the NPR aquisition mostly due to the --

4 A NPR aquisition, yes.

5 Q NPR aquisition. And because of the
6 short-term usage agreement with Emerald?

7 MR. ARMSTRONG: Object to the form.

8 A Can you repeat that? I didn't understand
9 that.

10 Q That the reason why you had more at the time
11 of the NPR aquisition was due to the fact that you had
12 additional equipment from short-term -- that
13 short-term usage agreement with Emerald and other
14 leases at the time, well, if that's what you said?

15 A We were operating more ships right after the
16 NPR aquisition.

17 Q And that's because you acquired ships from
18 the NPR aquisition?

19 A Yes.

20 Q Okay. Does -- did Sea Star Line purchase
21 certain assets from NPR, Inc., in April of 2002? I
22 believe you just indicated that there was an NPR
23 aquisition?

24 A We purchased certain assets from NPR.

25 Q And are you somewhat familiar with that

1 transaction?

2 A Yes.

3 Q Did you have any involvement in it?

4 A I spent some time in Philadelphia doing due
5 diligence.

6 Q And who else was involved in that
7 transaction on behalf of Sea Star Line?

8 A From an equipment standpoint, Andy Rooks was
9 with me.

10 Q And could you generally describe the
11 transaction and in particular what assets were
12 purchased?

13 A Okay. There were four ships.

14 Q That were purchased?

15 A Yes.

16 Q Do you know the names of those?

17 A Some terminal equipment.

18 Q Do you know the names of those ships at this
19 time?

20 A From memory the Humacao, Mayaguez and two
21 others.

22 Q Okay. All right. I'm sorry. So you
23 purchased some ships, you, Sea Star, and what were the
24 other assets purchased?

25 A A terminal lease in San Juan and a long list

1 of office equipment, office leases, some terminal
2 equipment --

3 Q When you say --

4 A -- receivables, terminal equipment.

5 Q Yeah, what is terminal equipment?

6 A That would be terminal handling equipment.

7 Q In terms of equipment, did you purchase
8 any -- the containers, the reefers, chassis?

9 A In general, no.

10 Q Did you purchase the bookings of NPR, it's
11 customers?

12 A Yes. When I said receivables, that would
13 be -- well, the receivables would be shipments that
14 had taken place where money was due.

15 Q Right.

16 A We also purchased shipments in progress at
17 the time of closing.

18 Q Any contracts with customers that --

19 A My understanding is no.

20 Q All right. As a result of this aquisition,
21 the aquisition of those assets of NPR, Inc., that you
22 mentioned, did Sea Star Line determine that it needed
23 to either lease or purchase equipment along the lines
24 of containers and gensets and reefers and chassis?

25 A Can you repeat that, please?

1 MR. MOLDOFF: Mark it Bates 1.

2 (Bates Exhibit 1 was marked for
3 identification.)

4 Q This is a document that was produce by Sea
5 Star, Bates stamped SE50012 and it goes to SE50013 and
6 then there's an attachment at SE500015 which runs
7 through SE50020 and just ask if you can just take a
8 look at that. If you need some time to review it,
9 that's fine. And it's really two parts. There's the
10 first part, which is a handwritten three pages and
11 then there's an attachment, separate questions about
12 each.

13 A Okay. And what's your question?

14 Q All right. Just with respect to the
15 handwritten portion of that, are you familiar with
16 that document?

17 A Yes. This document was my notes.

18 Q Is this your handwriting?

19 A Most of it. There's some other handwriting
20 on the edges.

21 Q And what was the purpose of this document?

22 A This was prior to the closing and this was
23 some of my notes on the transition schedule and
24 issues.

25 Q Does any of this pertain to the issue of

1 what equipment you may or may not need in connection
2 with this aquisition?

3 A The first three pages does not, the
4 handwritten.

5 Q The handwritten portion does not?

6 A Right.

7 Q Okay. The attachment, does that pertain to
8 that issue?

9 A There's a lot of different attachments.
10 There's one dated 4/9/02.

11 Q Which one is that?

12 A The first one.

13 Q Oh, I see. That's at SE50015.

14 A This is from the due diligence period and
15 it's -- it's a listing of the NPR equipment on their
16 leases and a lot of notes --

17 Q I see.

18 A -- details about when it was built and --

19 Q Is this document a document that was
20 prepared by NPR or Sea Star or someone else?

21 A I'm not sure who prepared it.

22 Q Do you think Sea Star may have prepared
23 this?

24 MR. ARMSTRONG: Object to the form.

25 A I don't know exactly who prepared this.

1 Q Okay. With respect to the part of that page
2 that refers to Emerald --

3 A Yes.

4 Q -- there is a handwritten note next to that,
5 do you see that? It's at number 5300 it looks like.

6 A I see that.

7 Q Is that your handwriting?

8 A I don't think so.

9 Q Do you know what that signifies?

10 A No.

11 Q Do you know what is being shown with respect
12 to Emerald on this page?

13 A It's a listing of the NPR equipment, a list
14 of Emerald's equipment. I can't read the top headings
15 but it seems to be grouped by type.

16 Q I see. Okay. Do you see the notes on the
17 bottom?

18 A Note one and note two?

19 Q Yes.

20 A Okay.

21 Q Do you know what either of those notes mean?
22 Note one says offer and acceptance letter.

23 A Something about a letter in 5/30/97.

24 Q That has nothing to do with Emerald?

25 A I don't know exactly what that means.

1 Q Okay.

2 A There's another note.

3 Q If you turn to the next page, which is
4 SE500016, could you tell me what that document is?

5 A This lists some of the groups of Emerald
6 equipment.

7 Q When you say Emerald equipment, is that
8 equipment NPR was leasing from Emerald as far as you
9 know?

10 A As far as I know, yes, and some estimates of
11 sales.

12 Q And do you know who prepared that document?

13 A No.

14 Q And where it says a column requirement, do
15 you know what that means?

16 A That would have been an estimate of a
17 possible requirement under one of the many scenarios.

18 Q And when you say an estimate of a
19 projection, you mean a projection by Sea Star Line?

20 MR. ARMSTRONG: Object to the form.

21 A I think so.

22 Q Okay. And go a couple of more pages in,
23 which is SE50018, up at the top --

24 A You're skipping one.

25 Q Yes.

1 A Okay. Yes.

2 Q It says NPR purchased equipment.

3 A Uh-huh.

4 Q Do you know, would that have anything to do
5 with any equipment that was Emerald equipment?

6 A This is handling equipment.

7 Q Okay.

8 A Mostly handling equipment. There are a few
9 gensets.

10 Q Yeah, I see that. On the next page, which
11 is SE50019, it says equipment for model volumes-NPR
12 and then it has container requirement and chassis
13 requirement, does that -- do you know what that --
14 what this pertains to?

15 A This looks like another estimate of possible
16 requirements.

17 Q Requirements of Sea Star?

18 A Yeah.

19 Q And it's dated April 19th, 2002?

20 A Yes.

21 Q And does it show the requirement from
22 Emerald --

23 A It shows possible requirements from Emerald
24 and other leasing companies.

25 Q If you just turn to the next page, which is

1 the last, it says container and chassis requirements,
2 Dominican Republic interport. Could you tell me what
3 this document is?

4 A Yeah. This is an another estimate sheet
5 estimating the amount of equipment that may be
6 required based on the amount of cargo that may be
7 available for Dominican Republic.

8 Q And, again, this is an estimate of
9 requirements by Sea Star?

10 A Yes.

11 Q Would Andy Rooks have been the one that
12 would have prepared these documents, if you know?

13 A I think so.

14 Q All right. Is it fair to say that at the
15 time of the aquisition Sea Star determined that it
16 needed some equipment? And when I say equipment,
17 again, I'm talking about containers and gensets, and
18 chassis, et cetera.

19 A Very short term Sea Star required additional
20 equipment.

21 Q And why was it only short term at that time?

22 A Because we didn't know how much cargo we
23 would carry or how many ships we would be able to
24 operate. The three NPR ships that were deployed
25 operated less than one month.

1 Q All right. In some point in time did Sea
2 Star Line have a better idea of how much equipment it
3 needed?

4 A Over time certainly.

5 Q Within the first few months did it make any
6 determination as how much equipment it needed?

7 A After the first three NPR ships laid off
8 there was excess equipment, so we determined we needed
9 less.

10 Q Okay. Before that time was there a
11 determination of how much equipment you needed?

12 A I'm sorry, what's your question?

13 Q Before those ships that you had purchased
14 from NPR you later sold those?

15 A Yes.

16 Q And that was within what period of time that
17 they were sold?

18 A Approximately a month.

19 Q Well, you bought four ships, right?

20 A Yes.

21 Q Did you sell all four?

22 A We sold all four.

23 Q And when were they sold?

24 A Approximately a month, maybe a little longer
25 after the aquisition.

1 Q But you determined that there was some
2 short-term need for equipment, is that correct, as you
3 indicated at the time of the aquisition of the NPR
4 assets?

5 A I told you already that prior to the
6 aquisition we had a lot estimates of cargo and we made
7 estimates of equipment use that we might require and
8 with the operation of the additional ships we didn't
9 require additional equipment.

10 Q And were any arrangements made with Emerald
11 for the leasing of equipment at that time?

12 A At what time?

13 Q At the -- just after the NPR aquisition
14 which was at or about the end of April, correct, of
15 2002?

16 A Yes, we made -- we made a user agreement.

17 Q With --

18 A -- by e-mail --

19 Q With Emerald?

20 A -- in early May.

21 Q And did you have any involvement in that?

22 A Yes.

23 Q And that was early May 2002?

24 A Yes.

25 Q And did you have any discussions with

1 someone at Emerald about that?

2 A I particularly remember Tom Holt, Jr.

3 Q And what were the nature of your
4 discussions?

5 A That even though we had not assumed the NPR
6 lease for Emerald equipment that we would pay for
7 equipment we used.

8 Q Okay. And you mentioned an e-mail or maybe
9 some e-mails about that in connection with that user
10 agreement, correct?

11 A Yes.

12 Q Other than that was there, any formal
13 writing at that time with respect to that agreement
14 that Sea Star would pay for any equipment it used?

15 A What does formal writing mean?

16 Q Well, like the -- a -- an actual lease
17 agreement.

18 A No, there was no lease agreement at that
19 time.

20 Q Let me show you what we -- what I'm going to
21 have marked as Bates 2.

22 (Bates Exhibit 2 was marked for
23 identification.)

24 A Okay.

25 Q Can you identify this document?

1 A This is my e-mail of May 2nd to Tom Holt,
2 Jr.

3 Q And does it pertain to that short-term user
4 agreement you just mentioned?

5 A It pertains to the short-term usage of
6 Emerald equipment, yes.

7 Q And does it generally state the terms of
8 what your agreement was at that time?

9 A Yes.

10 Q And this is based on your conversations with
11 Tom Holt, Jr.?

12 A Yes.

13 Q And the user agreement that you mention
14 there says that it's effective May 1st, 2002?

15 A Yes.

16 Q And that it pertains to Emerald equipment
17 which Sea Star dispatches out of any port terminal or
18 inland depot for customer use; is that correct?

19 A Yes.

20 Q And there are agreed upon per diems for Sea
21 Star's use of that equipment until it ceases to use it
22 and notifies --

23 A Yes, that's the attached sheet, it includes
24 per diems.

25 Q Okay. That's the per diems for the time

1 that Sea Star uses the equipment and then ceases to
2 use it and then notifies them of that, of the
3 termination, I guess; is that correct?

4 A Yes.

5 Q And on the bottom of that last paragraph it
6 says the minimum usage period for any unit is 30 days,
7 what -- what does that mean?

8 A That we agreed that -- that if we use the
9 equipment that we would have a minimum usage period of
10 30 days.

11 Q So that -- if you use it only for three days
12 you couldn't just pay for three days you had to pay
13 for 30 days?

14 A That's right.

15 Q If you used it for more than 30 days, you
16 used it for, say, 40 days, would you have to pay for
17 60 days or for only 40 days?

18 A 40 days.

19 Q And the attachment that's the equipment user
20 agreement, did you prepare that or somebody at Sea
21 Star?

22 A Yes.

23 Q And what does the column on the
24 attachment -- it says S/T market per diem, what does
25 that mean?

1 A This was an attachment to the e-mail and it
2 came from our discussion. We had proposed rates and
3 we had shown a column for our estimate of what market
4 value may be.

5 Q I see. Do you recall -- what does S/T stand
6 for, short term?

7 A Yes.

8 Q And what were the -- what were the values
9 that were agreed to, which column would that be, if
10 any, of these columns as to the agreed to rates?

11 A The Sea Star proposed short-term rate which
12 is in bold.

13 Q Okay. And your position is that that's
14 the -- that was the agreed to rates --

15 A Yes.

16 Q -- for the short-term user agreement?

17 A Yes.

18 Q Okay. All right. Did the parties at this
19 time contemplate a more normal writing to govern their
20 lease arrangements?

21 MR. ARMSTRONG: Objection to form.

22 A I'm sorry?

23 Q Did the parties, did Sea Star and Emerald,
24 do you know whether they contemplated -- that there
25 was contemplated there would be some more formal

1 MR. ARMSTRONG: Object to the form.

2 Q Why wouldn't you know?

3 MR. ARMSTRONG: Object to the form.

4 Q In what instances --

5 A Well, one of the terminals was

6 Philadelphia --

7 Q Yes.

8 A -- operated by the Holt group. I don't know
9 if they had access to all that information, for
10 instance.

11 Q What about the other terminals where that
12 equipment might have been located?

13 A Well, at least in San Juan we were using a
14 whole computer system at the gate particularly in the
15 beginning and, again, I don't know if they had access
16 to that or not to the Holt group.

17 Q How about Jacksonville?

18 A Jacksonville was primarily operating under
19 our computer --

20 Q And what about --

21 A -- so they may not have.

22 Q -- Port Everglades?

23 A Same as Jax, our computer.

24 Q All right. Prior to a -- was there actually
25 a more formal writing or a lease that was entered into

1 between Sea Star and Emerald with respect to use of
2 Emerald equipment?

3 A There was a short-term usage agreement that
4 was written and signed later in 2002.

5 Q Okay. But prior to that more formal
6 agreement did Sea Star begin to use Emerald equipment
7 under the short-term user agreement?

8 A Yes, after 5/02 --

9 Q Okay.

10 A -- we used some equipment that was
11 Emerald's.

12 Q And where was Emerald's equipment which Sea
13 Star began using located on or about May 2nd, 2002?

14 A Some of it might have been out to a shipper
15 at the time of transition. Some equipment --

16 Q When you say a shipper, what do you mean by
17 a shipper, for example?

18 A A customer that is shipping cargo.

19 Q All right.

20 A Some equipment was in the terminals.

21 Q When you say the terminals, you mean --

22 A Any of the three --

23 Q Right.

24 A -- terminals, Jacksonville NPR terminal to
25 San Juan NPR terminal and the Philadelphia terminal.

1 Q Okay.

2 A In addition there was equipment at inland
3 depots --

4 Q Right.

5 A -- for NPR.

6 Q Right.

7 A There was equipment in Dominican Republic.

8 Q Okay. At the time of the aquisition, the
9 NPR aquisition, was there also certain equipment that
10 was in transit?

11 A Yes.

12 Q What does that mean?

13 A That the NPR vessels sailed by Friday and
14 were at sea at the time of the transition. So there
15 was containers on -- equipment on those ships.

16 Q Was any of the equipment at that time in
17 Emerald's possession, to your knowledge?

18 MR. ARMSTRONG: Object to the form.

19 A Can you explain that?

20 Q Yeah. Specifically I'm talking about any of
21 the equipment that Sea Star may have used at or just
22 shortly after the NPR aquisition, was any of that
23 equipment actually in Emerald's possession so that Sea
24 Star called up Emerald and said, you know, we need
25 these containers?

1 MR. ARMSTRONG: Object to the form.

2 A The -- my understanding is that the Emerald
3 equipment was on hire to NPR.

4 Q Right.

5 A Yeah.

6 Q And therefore NPR at the time of the
7 aquisition was using that equipment or it made in
8 storage somewhere or whatever, but that that equipment
9 wasn't in Emerald's possession, is that your
10 understanding?

11 MR. ARMSTRONG: Object to the form.

12 A It was in NPR's possession.

13 Q Okay. Did Sea Star have any way to know
14 where this equipment was at the time of the
15 aquisition, the locations of all the NPR equipment
16 that -- all the Emerald equipment that NPR was using
17 or that it had -- NPR had pursuant to the lease with
18 NPR?

19 A The only thing we had was the NPR status
20 reports prior to aquisition.

21 Q Was there -- was there some sort of an
22 inventory that George Cervone had either prepared or
23 brought with him when he came to work for Sea Star?

24 A That's the status report I'm speaking of.

25 Q Okay. And that status report, would that

1 have indicated the locations of the various equipment?

2 A It would -- it listed NPR's input as to
3 their understanding of --

4 Q Right.

5 A -- the location of equipment.

6 Q Right. Do you know if -- do you know
7 whether or not Emerald knew where this equipment was?

8 A I don't know.

9 Q All right. We did discuss briefly just
10 before about, quote, in transit equipment, correct?

11 A Yes.

12 Q Was there some arrangement with NPR --
13 between NPR and Sea Star regarding equipment that was
14 being used by NPR at the time of Sea Star's purchase
15 of the NPR assets?

16 A Yes.

17 Q And can you describe what that arrangement
18 or agreement was?

19 MR. ARMSTRONG: Object to the form.

20 A Yeah. There was a -- as part of the closing
21 my understanding from the CFO was that there was a
22 payment included for the use of equipment relating to
23 the equipment in use at that time of transition which
24 would be in transit on the ships.

25 Q And when you say equipment, some of this was

1 equipment that Emerald had been leasing to NPR; is
2 that correct?

3 A Yes.

4 Q And do you know what that agreement was?
5 Specifically was there -- specifically what the
6 outcome of that agreement was?

7 A After the fact I saw some stuff from our CFO
8 that described it.

9 Q And that was an agreement that Sea Star was
10 to pay NPR for the usage of that equipment that was in
11 transit; is that correct?

12 A Yes.

13 MR. MOLDOFF: Mark this as Bates 3.

14 (Bates Exhibit 3 was marked for
15 identification.)

16 MR. MOLDOFF: Off the record.

17 (Off-the-record discussion.)

18 (Brief recess.)

19 BY MR. MOLDOFF:

20 Q Okay.

21 A You gave me this document.

22 Q Yeah. It's been marked Bates 3. Are you
23 familiar with this at all?

24 A Yeah, I just read it.

25 Q Did you see it before today?

1 me. You said that Emerald would request information
2 about equipment and we would then tell them where it
3 was. On what occasions would that occur?

4 A One occasion was our self billing reports
5 that we provided to them for the activity during any
6 month, that would include information about their
7 equipment. They at different times asked for
8 different kinds of information and we tried to provide
9 anything we could.

10 Q Okay. But other than that, there was no
11 mass notification of we've now tracked all of your
12 equipment and here's where all of your equipment is at
13 any point in time; is that correct?

14 A I don't remember that that question was
15 asked. We provided a lot of information. We provided
16 inventories to help them.

17 Q And pursuant to this short-term usage
18 agreement that you had that was agreed to pursuant to
19 your, I think, May 1st e-mail, Sea Star began using
20 some of this equipment; is that correct?

21 A Some of this equipment being equipment that
22 had been in transit or this equipment being any other
23 Emerald equipment which --

24 Q Let's take both. Some of the in transit
25 equipment.

1 A Yes. If it -- in some cases if equipment
2 was reloaded by a customer and used again, then we
3 recognize that as use and listed it and paid for it.
4 If it wasn't used again, it came back in empty, we
5 parked it.

6 Q And if it went to an inland depot it just
7 maybe sat there?

8 A I believe that a lot of the equipment that
9 went to inland depots was reused.

10 Q Reused by whom?

11 A It could be reused by Sea Star.

12 Q Well would it have been reused by anybody
13 else? Would anyone else have had the right to use
14 that equipment?

15 A I don't --

16 MR. ARMSTRONG: Object to the form.

17 A -- know.

18 Q The answer is no, no one else would have
19 been --

20 A Repeat that question.

21 Q Would anybody else have had the right to use
22 that equipment?

23 MR. ARMSTRONG: Object to the form.

24 Q If you know.

25 A Maybe Emerald.

1 Q Because Emerald owned that equipment?

2 A I think that -- that we were the more likely
3 user.

4 Q Okay. And you don't know of any other
5 leasing arrangement that Emerald had with anybody else
6 for this equipment, do you?

7 A I only know they had an agreement with NPR.

8 Q And then with Sea Star?

9 A It would be user agreement --

10 Q Yes.

11 A -- for equipment we used.

12 Q Right.

13 A Yes.

14 MR. MOLDOFF: Let's mark this Bates 4.

15 (Bates Exhibit 4 was marked for
16 identification.)

17 BY MR. MOLDOFF:

18 Q All right. I would ask you to take a look
19 at Bates 4.

20 A Okay.

21 Q Can you identify this?

22 A Yeah. This is the equipment rental
23 agreement between Emerald Leasing and Sea Star.

24 Q And did you sign this document on behalf of
25 Sea Star Line, LLC?

1 A Yes.

2 Q Is that your signature on the back next to
3 the last page?

4 A Yes, it is.

5 Q And is this document dated?

6 A It says as of blank day of July on the front
7 page.

8 Q July of --

9 A 2002.

10 Q Do you know when it was executed by both
11 sides?

12 A I believe the end of September 2002.

13 Q Do you know why there was a lapse of time?

14 A There were several drafts prior to the
15 final.

16 Q Did you participate at all in negotiating
17 the terms of this equipment rental agreement?

18 A Yes.

19 Q And with whom?

20 A Art Davis was involved in the discussion.

21 Q Anyone else?

22 A Maybe Tom Holt, Jr., but I'm not sure.

23 Q Do you recall if there were any terms in
24 particular that were the subject of negotiation?

25 A Not specifically.

1 Q Pay Emerald for?

2 A Yes.

3 Q And in various documents the term on hire is
4 used and would that be the same thing as the on hire
5 date as your initial use?

6 MR. ARMSTRONG: Object to the form.

7 A I think that's a term that's used in our
8 industry to indicate the start date of a payment --

9 Q Okay.

10 A -- period.

11 Q Could you go through the process of on
12 hiring equipment what -- what would take place, if
13 anything? And, again, I'm talking about in connection
14 with the transaction or with the use of Emerald
15 equipment.

16 A Only Emerald?

17 Q Yes.

18 A No other leasing company?

19 Q Right.

20 A Okay. Okay. With normal leasing companies
21 we would inspect equipment, accept it, and have a very
22 clear on hire date. In this case with Emerald since
23 we were also acting as a depot for Emerald and we're
24 required initially by the bankruptcy court to receive
25 all the NPR equipment that was -- that appeared at our

1 terminals, the on hire terminology is more confusing
2 because in order to receive anything through our
3 terminals our computer system requires that we enter
4 something in on hire. So in order to receive an empty
5 Emerald unit that came in from a trucker, we would
6 have to make an on hire entry in the computer system
7 to be able to receive it and have the information. So
8 on hire for the computer system didn't mean
9 necessarily on hire under the equipment rental
10 agreement.

11 Q And you talk about computer system, is this
12 what has been referred to in previous depositions as
13 IQ System -- IQSHIP I mean?

14 A The Sea Star equipment system is called
15 IQSHIP.

16 Q Okay. In connection with the Emerald
17 Equipment then, what would -- how would Emerald first
18 signify its -- I'm sorry. How would see Sea Star
19 first document its initial use of the equipment?

20 A We enter all TIR movements into our computer
21 system in the initial period right after the
22 aquisition of some of the assets of NPR, we also use
23 NPR computer system at some of the terminals, San Juan
24 and Packer continued to use its system -- I'm sorry,
25 what was your question?

1 Q My question was, how would you go about the
2 process of documenting Sea Star's initial use of the
3 Emerald equipment?

4 A Okay. Based on the TIR information that we
5 were able to collect and put into IQSHIP we were able
6 to identify units that we had used.

7 Q Now, the TIR system, that's a type of a
8 receipt that is used when a piece of equipment moves
9 in or out of the gate; is that correct?

10 A Yes.

11 Q And who is responsible for the preparation
12 of TIRs when a piece of equipment moves in or out of
13 the gate?

14 MR. ARMSTRONG: Object to the form.

15 Q If you know.

16 A TIRs are filled out by clerks at the gates
17 at all the terminals.

18 Q So if it's a Sea Star terminal would they be
19 Sea Star clerks?

20 A They would normally be union members
21 employed by a stevedore terminal vendor that we would
22 have a contract with.

23 Q Okay. That TIR would then be filled out and
24 that equipment moved in or out of the gate, correct?

25 A Uh-huh.

1 Q And then how would Sea Star know about that
2 movement?

3 A All the TIRs went into the port offices in
4 our terminals at Jax and San Juan and Port Everglades
5 and Sea Star or Sea Star agency employees would enter
6 that information into our computer system.

7 Q Is there a particular individual at each of
8 those ports that has the responsibility of doing that
9 or could it be a number of people?

10 A Each port has an equipment control manager
11 and they may or may not have additional people working
12 for them.

13 Q Could you just briefly tell me, if you know,
14 in Jacksonville who that person would be?

15 A At what time, what period of time, today?

16 Q No. During the -- subsequent to April 2002
17 when -- through 2003.

18 A During that period I believe in Jacksonville
19 it would be James Lee.

20 Q And how about Port Everglades, if you know?

21 A I can't remember his name.

22 Q San Juan?

23 A I can't remember his name either right now.

24 Q Are there -- okay. Are there -- did I miss
25 any ports?

1 A We have -- we have one fellow named Pagano
2 in New York, Port Elizabeth.

3 Q In Port Elizabeth. And he was the guy --
4 what's -- do you know his first name?

5 A Frankie. Frankie Pagano in Elizabeth, we
6 have Diaz, he was in San Juan.

7 Q Diaz. Okay. When -- when equipment was
8 returned to Port Elizabeth, would that equipment
9 somehow find its way down to Packer Avenue in
10 Philadelphia, do you know?

11 A Yes. If we had equipment to turn into
12 Emerald in the Northeast we would send it to Packer
13 Avenue.

14 Q Directly to Packer Avenue or would it go to
15 Port Elizabeth and then truck down?

16 A The ship went to Port Elizabeth, so after
17 it -- get off the ship and complete its move we would
18 have to track it to Packer Avenue.

19 Q Okay. All right. And so you have
20 individuals whose responsibility is to take those TIRs
21 and what do they do with those TIRs?

22 A They input pertinent data into the IQSHIP
23 system.

24 Q And is that done all the time?

25 A Yeah, every day.

1 Q Is a TIR the same thing as an equipment
2 interchange receipt?

3 A Yes. A TIR is a trailer interchange receipt
4 which is used as terminology in many ports and EIR is
5 an equipment interchange receipt which is the same
6 thing.

7 Q Are there other types of receipts in and out
8 of port terminals or would they be the TIRs or EIRs?

9 A As far as containers and trailers --

10 Q That's --

11 A -- it's TIRs.

12 Q What about an inland depot, do they use the
13 same terminology or is there some other terminology?

14 A I believe they normally use the same
15 terminology.

16 Q Is there such a thing as a gate log? If you
17 know.

18 A A gate log?

19 Q Yes.

20 A A gate log may be a listing of all the
21 movements in a day or period of time.

22 Q Is there such a thing as a gate receipt
23 other than a TIR or an EIR, some other form of
24 document that is used other than what's normally used
25 at port terminals?

1 A We use dock receipts, a different kind of
2 form for cars, bull dozers, self-propelled cargos.

3 Q Right. But what about containers, as far as
4 you know?

5 A As far as I know, it's all TIRs or EIRs.

6 Q Okay. With respect to IQSHIP could you just
7 describe what you know about that?

8 A About that?

9 Q About that system, how that works.

10 MR. ARMSTRONG: Object to the form.

11 A It's a very broad question. You're asking
12 me how IQSHIP works?

13 Q Well -- okay. I'm sorry. You're right.
14 What is the purpose of IQSHIP?

15 MR. ARMSTRONG: Object to the form. Do you
16 want to limit it to equipment or do you want to
17 be broad?

18 Q Well, is IQSHIP used for more than just
19 equipment?

20 A Yes.

21 Q What other things is IQSHIP used for?

22 A Taking booking, creating documentation for
23 shipments.

24 Q It kind of helps you track it, doesn't it?

25 A It's all related.

1 Q IQSHIP's a computer program of some sort?

2 A Yes, it is. It's a software.

3 Q And is that -- is that something special
4 that only Sea Star uses?

5 A No. It's a -- IQSHIP has been used by a
6 number of other lines in the world. In addition to
7 the others obviously we also use it to track
8 equipment.

9 Q Do you know if Sea Star Line used any
10 Emerald equipment that wasn't documented by a TIR?

11 A I don't know of any that would be used
12 without a TIR.

13 Q If -- is it possible that equipment was
14 being used without a TIR?

15 MR. ARMSTRONG: Object to the form.

16 Q If you know.

17 A No.

18 Q If Sea Star used certain equipment for which
19 a TIR was not prepared, do you believe that Sea Star
20 would be obligated to pay for that equip- -- the use
21 of that equipment if it actually used it?

22 MR. ARMSTRONG: Object to the form.

23 A If we used equipment we agreed to pay. I
24 also just said that I don't think there could be
25 equipment used without a TIR.

1 A Okay. When you asked me how it was prepared
2 I told you that we punch a button in the computer and
3 it prints it out from the database.

4 Q Okay. Based on what you just said about how
5 all this information gets inputted into the
6 computer --

7 A Yeah, that's how it gets into the database.

8 Q So -- and the equipment list is just a
9 function -- or this load summary's a function of
10 just -- is just punching the right keys and then the
11 computer pops it out for each ship's --

12 A It's a report, yes.

13 Q Report. Okay. When Sea Star first used any
14 equipment that was equipment that had been in transit
15 and then Sea Star determined that it wanted to use
16 some of that equipment later after the in transit
17 period was over --

18 A Okay.

19 Q -- was Emerald notified at that time that
20 that piece of equipment was going to be used?

21 A Was Emerald notified -- this is in relation
22 to equipment that was in transit?

23 Q Yes.

24 A If something after the initial voyage if we
25 had used it again --

1 Q Yeah.

2 A -- did we notify them? No. We put it on
3 the -- we tracked it and added it to the self billing
4 report.

5 Q Through the TIRs or the IQSHIP and then a
6 self billing report?

7 A Yes.

8 Q But would Emerald have any way of knowing
9 what equipment was being used other than through that
10 process?

11 MR. ARMSTRONG: Object to the form.

12 A I don't know.

13 Q There was no document or receipt that you
14 needed to get from Emerald in order to use any of that
15 equipment, was there?

16 A No.

17 Q Okay. And equipment other than -- that was
18 in transit, Sea Star at some point in time in or about
19 the beginning of May 2002 began using some of
20 Emerald's equipment; is that correct?

21 A Sometime in May of 2002, yes.

22 Q And where was this equipment located, the
23 equipment now that wasn't in transit?

24 A Again, there are many cases. There may have
25 been a customer who then sent it in loaded and we

1 Q Any of the equipment that Sea Star started
2 to use in or about May of 2002 that wasn't in transit,
3 was any of that equipment in Emerald's possession --

4 MR. ARMSTRONG: Object to the form.

5 Q -- at the time that it wanted to use that
6 equipment -- that Sea Star wanted to use that
7 equipment?

8 A You asked me that before. It had been in
9 use by NPR.

10 Q Okay. And when Sea Star used any of this
11 equipment that wasn't in transit, whether it was in
12 inland depot or some other port, again, that same
13 process with the TIRs would have been executed before
14 Sea Star used that equipment or at the time Sea Star
15 used that equipment?

16 A Yeah. Every load that we received at any
17 terminal had a TIR. If we received it at Jacksonville
18 a TIR was issued and that would tell us it was a load.

19 Q Okay. And in the course of the arrangements
20 between Sea Star and Emerald, when would Sea Star's
21 obligation to stop paying rent on a particular piece
22 of equipment occur?

23 MR. ARMSTRONG: Object to the form.

24 A After we used a piece of equipment --

25 Q Yes.

1 reports to check the invoices of leasing --

2 Q Yeah, I understand that.

3 A Most leasing companies produce invoices to
4 us.

5 Q Right.

6 A Okay. As far as a self billing report we
7 produced a spreadsheet to support the Emerald activity
8 for the equipment that we used.

9 Q And to support your payments?

10 A And to support our payments to them. We
11 also used initially our reports to MBC to designate
12 the equipment that was MBC and had nothing to do with
13 Emerald that we agreed to honor.

14 Q Right. You didn't receive any invoices from
15 Emerald or MBC with respect to the Emerald equipment,
16 did you?

17 A I didn't receive any invoices from Emerald.
18 I'm not sure if we started to receive invoices from
19 MBC later.

20 Q When you say with MBC, do you mean with
21 respect to the separate lease --

22 A To their own equipment.

23 Q But the arrangement whereby you're using the
24 self billing report for the purpose of supporting
25 payments and you're not receiving invoices from the

1 leasing company, how usual is that?

2 A Unusual.

3 Q It's unusual. And why was this system used
4 in this case?

5 MR. ARMSTRONG: Object to the form.

6 Q This system being the self billing reports
7 to support the payments where you're not receiving
8 invoices from the leasing company.

9 A Well, we said we'd pay for equipment we
10 used, so we identified the equipment that we used so
11 that we could pay for it.

12 Q Did Emerald have any way of knowing what
13 equipment it is you were using?

14 MR. ARMSTRONG: Object to the form.

15 A You asked that before and I don't know.

16 Q Okay. Do you remember who you discussed the
17 self billing report mechanism to support payments as
18 opposed to receiving invoices from Emerald or MBC who
19 you discussed that with at either MBC or Emerald?

20 A I recall discussing some details with --
21 with Art Davis of Emerald and I remember discussing
22 some details with Scott Cregor (Phonetic) of MBC.

23 Q Okay. And are self billing reports prepared
24 from the IQ system, IQSHIP system?

25 A The normal self billing reports that are

The damage exclusion amount for each type will apply before SSL pays for any additional damage during usage. In the event of total loss of any equipment, proposed D.V. value would be payable to Emerald.

The minimum usage period for any unit is 30 days, and any equipment may be returned to any of the 3 port locations at anytime. This agreement can be terminated by either party on 30 days notice, with an additional 30 day wind down at the same rates.

(See attached file: Equipment User Agreement.xls)

(c)



- Equipment User Agreement.xls

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PBates@seastarline.com
Sent by:
MAhmed@SEASTARLINE.COM

To: tholtjr@holtmarine.com

cc: ARooks@seastarline.com, brian@saltchuk.com

Subject: Agreement for Short-Term Usage of Emerald Equipment.

→ 05/02/2002 03:14 PM

As agreed today, this user agreement is effective 5/1/02 and applicable to any cargo worthy Emerald equipment which SSL dispatches out of any port terminal or inland depot for customer use. Agreed per diems will continue for each unit until SSL ceases to use it and notifies Emerald thereof, as well as the port location of that unit (JAX, SJU, PHL) or SSL reaches agreement to purchase of said L/T lease unit.

(SSL will make a best effort to return any Emerald equipment used under this agreement to any off-dock depot designated by Emerald near the three port locations, as long as SSL does not incur additional expense.)

The damage exclusion amount for each type of equipment defines the average estimated IIICL damages which are currently on each type of equipment before SSL uses any of it. The equipment dispatched out from each of the port terminals (including Packer Avenue and inland depots) is expected to be in running condition as evidenced by the outbound TIR. Any equipment returned by SSL to Packer Avenue, any other terminal or depot should be in running condition, unless noted on the TIR. Emerald/Holt must notify SSL immediately of any equipment which is damaged at the time of return to the terminal, as noted on the inbound TIR. SSL will rebill the responsible party, and repair or pay Emerald for the repair cost of this type of new damage during SSL usage. In the event of total loss of any equipment, the agreed D.V. value will be payable to Emerald.

The minimum usage period for any unit is 30 days, and any equipment may be returned to any of the 3 port locations at anytime or any designated Emerald depot (on a best efforts basis, without additional expense to SSL). This agreement can be terminated by either party on 30-days notice, with an additional 30-days wind down at the same rates.

(See attached file: Equipment User Agreement.xls)

Phil Bates

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- Equipment User Agreement.xls

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